

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BIDZIRK, LLC, DANIEL G. SCHMIDT,)
III, and JILL PATTERSON,)

Plaintiffs,)

v.)

PHILIP RUSS SMITH,)

Defendant.)

Civil Action No. 6:06-CV-00109-HMH

AFFIDAVIT OF DANIEL G. SCHMIDT, III

CAME BEFORE ME, the undersigned officer duly authorized to administer oaths,
Daniel G. Schmidt, III, who, upon being sworn, deposes and states:

1.

My name is Daniel G. Schmidt, III. I am over 18 years of age and am competent in all respects to testify to the matters asserted herein. I have personal knowledge of those matters and know them to be true. This affidavit is given in support of Plaintiffs' motion for preliminary injunction in the above-captioned action, and for any other lawful purpose.

2.

Along with my wife, Plaintiff Jill Patterson, I am a principal in Plaintiff BidZirk, LLC ("BidZirk"), which began corporate operations in 2005.

3.

BidZirk is an auction consignment business. BidZirk accepts items for sale on the internet auction site eBay. When a customer consigns an item with BidZirk makes arrangements

to list the item on eBay, monitors the auction of the item, arranges for collection of monies from the buyer, and ships the item to the buyer. BidZirk collects a fee (a percentage of the item's sales price plus administrative costs) for the services it provides. When the sale of an item is concluded, and BidZirk has received payment from the buyer, it forwards to the consigning seller his/her share of the proceeds of the sale.

4.

In approximately March 2005 I was approached by Defendant, who indicated that he had a large inventory of computer equipment that he wished to consign with BidZirk and sell on eBay. BidZirk accepted Defendant's consignments, listed the items, and proceeded to auction the items on eBay.

5.

Ultimately, Defendant expressed dissatisfaction both with the prices received for certain items, and with the time it took to receive his share of the sales proceeds. BidZirk paid to Defendant all the money he was owed, consistent with the provisions of BidZirk's customer agreement, which Defendant executed.

6.

BidZirk's trademark includes its distinctive name, as well as its logo, a green and purple swirl behind the silhouetted image of a monkey. BidZirk's trademarks have been submitted to the United States Patent and Trademark Office ("PTO") and have not been identified as similar with any other registered mark. I am aware of no other business that utilizes a logo or name that could fairly be described as similar to BidZirk's logo and name.

7.

BidZirk's trademarks were created for the business, and have never been utilized to promote any other enterprise.

8.

Shortly after BidZirk was incorporated and began doing business, the company employed an advertising agency in Greenville, South Carolina to assist in promotion and advertising for BidZirk. The agency has assisted BidZirk in leasing billboard space around upstate South Carolina, and printed materials on behalf of BidZirk. In addition, BidZirk has printed and distributed thousands of brochures and business cards featuring BidZirk's trademarks, and has spent approximately 80 hours developing and maintaining its web site, www.bidzirk.com, to date.

9.

BidZirk currently maintains two physical locations in high-traffic areas of Greenville, South Carolina – one store at Cherrydale Shopping Center on Poinsett Highway, and another at the Shops at Mills Mill on Mills Avenue.

10.

BidZirk maintains a close relationship with eBay, since that entity is the ultimate source of BidZirk's income. As a result, I am very familiar with eBay and the community of regular users that visit www.ebay.com. I am informed that eBay claims to have over 140 million registered users.


11.

It is common practice among buyers on eBay to research the sellers with whom they propose to deal. Buyers are permitted to post feedback on their experiences with individual sellers on the eBay website. In addition, in the case of BidZirk, it would be easy to research the company by simply running a search for BidZirk's name in any one of the major internet search engines, including Google and Yahoo.

FURTHER AFFIANT SAYETH NAUGHT.


DANIEL G. SCHMIDT, III

Sworn to and subscribed
before me this 13th day
of February, 2006.


NOTARY PUBLIC
107-4p 9/12/2009